

ESTTA Tracking number: **ESTTA42312**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Samuel T. Lockner		
Entity	Attorneys	Citizenship	Minnesota
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Correspondence information	Samuel T. Lockner Winthrop & Weinstine, P.A. 225 South Sixth StreetSuite 3500 Minneapolis, MN 55402 UNITED STATES slockner@winthrop.com Phone:612-604-6439
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Registration Subject to Cancellation

Registration No	2882139	Registration date	09/07/2004
Registrant	AGRIGUARD COMPANY, LLC 186 NORTH AVENUE EAST CRANFORD, NJ 07016 UNITED STATES		
Goods/Services Subject to Cancellation	Class 005. First Use: 20011109, First Use In Commerce: 20040218 Goods/Services: Pesticides for agricultural and horticultural use		

Attachments	Petition to Cancel.pdf (4 pages)
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Signature	/Samuel T. Lockner/
Name	Samuel T. Lockner
Date	08/16/2005

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

McLaughlin Gormley King Company,

Petitioner,

v.

Cancellation No. _____

Agriguard Company, LLC

Respondent.

PETITION TO CANCEL

McLaughlin Gormley King Company ("Petitioner"), a Minnesota corporation, having a principal place of business at 8810 10th Avenue North, Golden Valley, Minnesota 55427, believes that it is and will continue to be damaged by registration of the mark MULTIGUARD (Registration No. 2,882,139) and hereby petitions to cancel the same pursuant to the provisions of 15 U.S.C. § 1064.

The grounds for cancellation are as follows:

1. Agriguard Company, LLC ("Respondent") is the record owner of U.S. Reg. No. 2,882,139 for the mark MULTIGUARD ("Respondent's MULTIGUARD mark") for pesticides for agricultural and horticulture use.
2. Respondent has alleged that it first used the mark depicted in U.S. Reg. No. 2,882,139 in commerce and in connection with Respondent's goods on February 18, 2002.
3. On information and belief, Respondent did not use Respondent's MULTIGUARD mark prior to November 9, 2001, in any capacity or form.

4. On information and belief, Respondent has no basis for claiming a first use date earlier than November 9, 2001.

5. U.S. Registration No. 2,882,139 issued on September 7, 2004, within five years of the date of this Petition to Cancel.

6. Since at least as early as June, 1937, Petitioner continuously has used in commerce Petitioner's MULTICIDE mark ("Petitioner's MULTICIDE mark") in connection with pesticides and insecticides.

7. Petitioner has expended considerable time, effort, and expense in promoting, advertising, and popularizing Petitioner's MULTICIDE mark as well as the goods offered in connection with Petitioner's MULTICIDE mark, with the result that the purchasing public has come to know, rely upon, and recognize Petitioner's MULTICIDE mark as a very strong indicator of the source of the goods provided in connection with the mark. Petitioner has established valuable goodwill in Petitioner's MULTICIDE mark.

8. Petitioner has priority rights in Petitioner's MULTICIDE mark for pesticides and insecticides.

9. On information and belief, Petitioner's goods and Respondent's goods are overlapping and closely related.

10. On information and belief, Respondent's MULTIGUARD mark so resembles Petitioner's MULTICIDE mark as to be likely, when used in connection with the goods listed in U.S. Reg. No. 2,882,139, to cause confusion, or to cause mistake, or to deceive.

11. Respondent's MULTIGUARD mark is highly similar to Petitioner's MULTICIDE mark phonetically, visually, and in meaning. Petitioner's mark is composed of nine (9) letters and Respondent's mark is composed of ten (10) letters – both having the same

first five (5) letters and the same hard “d” ending sound. Each mark consists of a three syllable word that begins with the prefix “multi.” Petitioner’s mark incorporates the suffix “cide,” which connotes an act related to killing or death; in this instance, it suggests a means to protect against pests and insects. Similarly, Respondent’s mark incorporates the suffix “guard,” which means to protect from harm. On information and belief, “cide” and “guard” have similar connotations and meanings in the context of pesticides and insecticides.

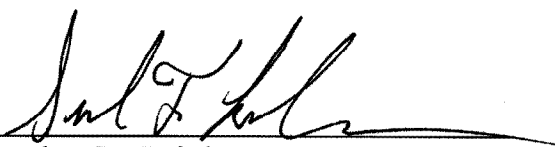
12. On information and belief, purchasers and prospective purchasers are likely to mistakenly believe that the goods Respondent offers under the mark MULTIGUARD are sponsored, endorsed, or approved by Petitioner, or are in some way affiliated, connected, or associated with Petitioner, all to the detriment of Petitioner. Registration of Respondent’s mark should therefore be cancelled under 15 U.S.C. §§ 1052(d) and 1064.

13. On information and belief, the continued existence of U.S. Registration No. 2,882,139 for the mark MULTIGUARD further damages Petitioner, as the registration confers upon Respondent various statutory presumptions to which it is not entitled in view of Petitioner’s long prior use and registration of Petitioner’s MULTICIDE mark.

WHEREFORE, pursuant to Section 14 of the Lanham Act, 15 U.S.C. § 1064, Petitioner respectfully requests that U.S. Registration No. 2,882,139 be canceled and that this Petition to Cancel be sustained.

Dated: August 16, 2005

WINTHROP & WEINSTINE, P.A.

By: 
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